

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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EINAR J. OTTERNESS,

Case No. 17-CV-4767 (NEB/TNL)

Plaintiff,

v.

ORDER ACCEPTING  
REPORT AND RECOMMENDATION

ANDERSEN WINDOWS  
CORPORATION,

Defendant.

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The Court has received the June 24, 2019 Report and Recommendation (“R&R”) of United States Magistrate Judge Tony N. Leung. [ECF No. 115.] On July 29, 2019 Plaintiff Einar J. Otterness filed an “Appeal of Report & Recommendation and Motion Response to Move Forward With Jury Trial Hearing and Summons for Person(s) to Appear Jury Trial and Final Settlement Conference Scheduled Before Jury Trial to be Scheduled on Calendar be Granted,” [ECF No. 117] and a “Motion for Oreder [sic] and Summon(s) of Person(s) as Witnesses to Appear for Jury Trial” [ECF No. 118]. Because the R&R was issued on a dispositive motion, the Court construes Otterness’s appeal as an objection to the R&R. The Court will not consider the objections, however, because Otterness filed them well after the applicable objection period ended. *See* D. Minn. L.R. 72.2(b)(1) (“A party may file and serve specific written objections to a magistrate judge's proposed

findings and recommendations within 14 days after being served with a copy of the recommended disposition . . . .”).

Even if this Court were to consider the filing timely, it would still review the R&R only for clear error because the objections provide no substantive rebuttal to the merits of the R&R. Instead, Otterness appears merely to be asking the Court to continue with a final settlement conference, jury trial, and issuing a summons for witnesses. He states no reason why the R&R was incorrect. Courts will review objections for clear error when a party objects but “does not cite any reason why the Magistrate Judge’s determination was incorrect, nor any basis for th[e] Court to reach a different outcome.” *Reed v. Curry Concrete Const., Inc.*, No. CIV. 10-4329 JRT/LIB, 2011 WL 2015217, at \*2 (D. Minn. May 23, 2011) (quotation marks and citations omitted).

Finding no clear error, and based upon all the files, records, and proceedings in the above-captioned matter, IT IS HEREBY ORDERED THAT:

1. Plaintiff’s objections to the R&R [ECF No. 117]<sup>1</sup> are OVERRULED;
2. The Report and Recommendation [ECF No. 115] is ACCEPTED;
3. Defendant’s “Motion for Summary Judgment” [ECF No. 74] is GRANTED;
4. Plaintiff’s “Motion for Order of Dismissal of Defendant’s (‘Andersen’s’) Summary Judgment be Granted” [ECF No. 109] is DENIED;

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<sup>1</sup> To the extent this filing seeks additional procedural relief, those requests are denied as moot.

5. Plaintiff's "Motion for Oreder [sic] and Summon(s) of Person(s) as Witnesses to Appear for Jury Trial" [ECF No. 107]; oral motion for expedited trial; "Motion for Hearing and Order for Correction and Summons for Person(s) to Appear for Jury Trial and Final Settlement Conference Scheduled Before Jury Trial to be Scheduled on Calendar be Granted" [ECF No. 112]; "Motion for Order of Summons to Appear for Jury Trial of Person(s) as Witness be Granted" [ECF No. 113]; and "Motion for Order and Summon(s) of Person(s) as Witnesses to appear for Jury Trial" [ECF No. 118] are DENIED AS MOOT; and
6. This matter is DISMISSED WITH PREJUDICE.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 21, 2019

BY THE COURT:

s/Nancy E. Brasel  
Nancy E. Brasel  
United States District Judge